

# SADDLEBACK MOUNTAIN-ARIZONA SETTLEMENT ACT OF 1995

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Y 4. IN 2/11: S. HRG. 104-362

Saddleback Mountain-Arizona Settlem...

## HEARING BEFORE THE COMMITTEE ON INDIAN AFFAIRS UNITED STATES SENATE ONE HUNDRED FOURTH CONGRESS

FIRST SESSION

ON

**S. 1341**

TO PROVIDE FOR THE TRANSFER OF CERTAIN LANDS TO THE SALT  
RIVER PIMA-MARICOPA INDIAN COMMUNITY AND THE CITY OF  
SCOTTSDALE, AZ

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OCTOBER 26, 1995  
WASHINGTON, DC



U.S. GOVERNMENT PRINTING OFFICE

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# **SADDLEBACK MOUNTAIN-ARIZONA SETTLEMENT ACT OF 1995**

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**THURSDAY, OCTOBER 26, 1995**

**U.S. SENATE,  
COMMITTEE ON INDIAN AFFAIRS,  
*Washington, DC.***

The committee met, pursuant to notice, at 9:29 a.m. in room 485, Senate Russell Building, Hon. John McCain (chairman of the committee) presiding.

Present: Senator McCain.

## **STATEMENT OF HON. JOHN MCCAIN, U.S. SENATOR FROM ARIZONA, CHAIRMAN, COMMITTEE ON INDIAN AFFAIRS**

The CHAIRMAN. I want to welcome everyone here this morning for this hearing on S. 1341, the Saddleback Mountain-Arizona Settlement Act of 1995. We will be receiving testimony from President Ivan Makil of the Salt River Pima-Maricopa Indian Community; Mayor Herbert Drinkwater of the city of Scottsdale; and Terrance Virden, Acting Director of the Office of Trust Responsibility in the Bureau of Indian Affairs.

I was pleased to join with Senator Kyl in introducing this legislation at the request of the Salt River Indian Community and the city of Scottsdale. The purpose of the bill is to ratify an agreement negotiated by the Indian community, the city and the RTC. The agreement settles a dispute over the future use of 701 acres of undeveloped land that includes Saddleback Mountain, a unique natural landmark of great significance both to the city and the Indian community.

This settlement will enable the parties to realize their respective goals for the disputed property and will result in the dismissal of costly litigation. The settlement does not require any new authorization of expenditure of Federal funds; rather, the Resolution Trust Corporation and the taxpayers will realize \$6.5 million from the sale of the property. I believe this settlement demonstrates vividly the value and benefit of seeking to settle disputes through negotiations, not litigation.

President Makil and the Salt River Indian Community Council, Mayor Drinkwater and the Scottsdale City Council, along with their representatives and those of the RTC who worked to produce the Saddleback settlement deserve great credit for their enlightened leadership. I look forward to hearing their testimony. I would like to say again, in order to achieve something like this, it requires leadership. And we're blessed in Arizona to have two out-

standing leaders, President Ivan Makil, and Mayor Herb Drinkwater, who, through their personal leadership, the long and fruitful relationship that they've enjoyed, made this settlement a reality. I see no difficulty in getting this enacted into law very soon.

[Text of S. 1341 follows:]



104TH CONGRESS  
1ST SESSION

# S. 1341

To provide for the transfer of certain lands to the Salt River Pima-Maricopa Indian Community and the city of Scottsdale, Arizona, and for other purposes.

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## IN THE SENATE OF THE UNITED STATES

OCTOBER 19 (legislative day, OCTOBER 18), 1995

Mr. MCCAIN (for himself and Mr. KYL) introduced the following bill; which  
was read twice and referred to the Committee on Indian Affairs

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## A BILL

To provide for the transfer of certain lands to the Salt River Pima-Maricopa Indian Community and the city of Scottsdale, Arizona, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled,*

### 3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Saddleback Mountain-  
5 Arizona Settlement Act of 1995”.

### 6 **SEC. 2. FINDINGS AND PURPOSES.**

7 (a) **FINDINGS.**—Congress finds that—

8 (1) the Salt River Pima-Maricopa Indian Com-  
9 munity and the city of Scottsdale, Arizona, have a  
10 longstanding interest in a 701-acre tract of land

1 known as the "Saddleback Property", that lies with-  
2 in the boundaries of the City and abuts the north  
3 boundary of the Salt River Pima-Maricopa Indian  
4 Reservation;

5 (2) the Saddleback Property includes  
6 Saddleback Mountain and scenic hilly terrain along  
7 the Shea Boulevard corridor in Scottsdale, Arizona,  
8 that—

9 (A) has significant conservation value; and

10 (B) is of historic and cultural significance

11 to the Community;

12 (3) in 1989, the Resolution Trust Corporation  
13 acquired the Saddleback Property as a receiver for  
14 the Sun City Savings and Loan Association;

15 (4) after the Saddleback Property was noticed  
16 for sale by the Resolution Trust Corporation, a dis-  
17 pute between the Community and the City arose  
18 concerning the future ownership, use, and develop-  
19 ment of the Saddleback Property;

20 (5) the Community and the City each filed liti-  
21 gation with respect to that dispute, but in lieu of  
22 pursuing that litigation, the Community and the  
23 City negotiated a Settlement Agreement that—

1 (A) addresses the concerns of each of those  
2 parties with respect to the future use and devel-  
3 opment of the Saddleback Property; and

4 (B) provides for the dismissal of the litiga-  
5 tion;

6 (6) under the Settlement Agreement, subject to  
7 detailed use and development agreements—

8 (A) the Community will purchase a portion  
9 of the Saddleback Property; and

10 (B) the City will purchase the remaining  
11 portion of that property; and

12 (7) the Community and the City agree that the  
13 enactment of legislation by Congress to ratify the  
14 Settlement Agreement is necessary in order for—

15 (A) the Settlement Agreement to become  
16 effective; and

17 (B) the United States to take into trust  
18 the property referred to in paragraph (6)(A)  
19 and make that property a part of the Reserva-  
20 tion.

21 (b) PURPOSES.—The purposes of this Act are—

22 (1) to approve and confirm the Settlement, Re-  
23 lease, and Property Conveyance Agreement executed  
24 by the Community, the City, and the Resolution  
25 Trust Corporation;

(2) to ensure that the Settlement Agreement (including the Development Agreement, the Use Agreement, and all other associated ancillary agreements and exhibits)—

(A) is carried out; and

(B) is fully enforceable in accordance with its terms, including judicial remedies and binding arbitration provisions; and

(3) to provide for the taking into trust by the United States of the portion of the Saddleback Property purchased by the Community in order to make that portion a part of the Reservation.

### SEC. 3. DEFINITIONS.

For the purposes of this Act, the following definitions shall apply:

(1) CITY.—The term “City” means the city of Scottsdale, Arizona, which is a municipal corporation in the State of Arizona.

(2) COMMUNITY.—The term “Community” means the Salt River Pima-Maricopa Indian Community, which is a federally recognized Indian tribe.

(3) DEDICATION PROPERTY.—The term “Dedication Property” means a portion of the Saddleback Property, consisting of approximately 27 acres of

1 such property, that the City will acquire in accord-  
2 ance with the Settlement Agreement.

3 (4) DEVELOPMENT AGREEMENT.—The term  
4 “Development Agreement” means the agreement be-  
5 tween the City and the Community, executed on  
6 September 11, 1995, that sets forth conditions and  
7 restrictions that—

8 (A) are supplemental to the Settlement,  
9 Release and Property Conveyance Agreement  
10 referred to in paragraph (11)(A); and

11 (B) apply to the future use and develop-  
12 ment of the Development Property.

13 (5) DEVELOPMENT PROPERTY.—The term “De-  
14 velopment Property” means a portion of the  
15 Saddleback Property, consisting of approximately  
16 211 acres, that the Community will acquire in ac-  
17 cordance with the Settlement Agreement.

18 (6) MOUNTAIN PROPERTY.—The term “Moun-  
19 tain Property” means a portion of the Saddleback  
20 Property, consisting of approximately 365 acres,  
21 that the Community will acquire in accordance with  
22 the Settlement Agreement.

23 (7) PRESERVATION PROPERTY.—The term  
24 “Preservation Property” means a portion of the  
25 Saddleback Property, consisting of approximately 98

1        acres, that the City will acquire in accordance with  
2        the Settlement Agreement.

3            (8) RESERVATION.—The term “Reservation”  
4        means the Salt River Pima-Maricopa Indian Res-  
5        ervation.

6            (9) SADDLEBACK PROPERTY.—The term  
7        “Saddleback Property” means a tract of land that—

8            (A) consists of approximately 701 acres  
9        within the city of Scottsdale, Arizona; and

10          (B) includes the Dedication Property, the  
11        Development Property, the Mountain Property,  
12        and the Preservation Property.

13          (10) SECRETARY.—The term “Secretary”  
14        means the Secretary of the Interior.

15          (11) SETTLEMENT AGREEMENT.—The term  
16        “Settlement Agreement”—

17          (A) means the Settlement, Release and  
18        Property Conveyance Agreement executed on  
19        September 11, 1995, by the Community, the  
20        City, and the Resolution Trust Corporation (in  
21        its capacity as the Receiver for the Sun State  
22        Savings and Loan Association, F.S.A.); and

23          (B) includes the Development Agreement,  
24        the Use Agreement, and all other associated an-  
25        cillary agreements and exhibits.

1           (12) USE AGREEMENT.—The term “Use Agree-  
2           ment” means the agreement between the City and  
3           the Community, executed on September 11, 1995,  
4           that sets forth conditions and restrictions that—

5                   (A) are supplemental to the Settlement,  
6           Release and Property Conveyance Agreement  
7           referred to in paragraph (11)(A); and

8                   (B) apply to the future use and develop-  
9           ment of the Mountain Property.

10 **SEC. 4. APPROVAL OF AGREEMENT.**

11           The Settlement Agreement is hereby approved and  
12           ratified and shall be fully enforceable in accordance with  
13           its terms and the provisions of this Act.

14 **SEC. 5. TRANSFER OF PROPERTIES.**

15           (a) IN GENERAL.—Upon satisfaction of all conditions  
16           to closing set forth in the Settlement Agreement, the Reso-  
17           lution Trust Corporation shall transfer, pursuant to the  
18           terms of the Settlement Agreement—

19                   (1) to the Secretary, the Mountain Property  
20           and the Development Property purchased by the  
21           Community from the Resolution Trust Corporation;  
22           and

23                   (2) to the City, the Preservation Property and  
24           the Dedication Property purchased by the City from  
25           the Resolution Trust Corporation.

1 (b) TRUST STATUS.—The Mountain Property and  
2 the Development Property transferred pursuant to sub-  
3 section (a)(1) shall, subject to sections 6 and 7—

4 (1) be held in trust by the United States for the  
5 Community; and

6 (2) become part of the Reservation.

7 (c) RECORDS.—Upon the satisfaction of all of the  
8 conditions of closing set forth in the Settlement Agree-  
9 ment, the Secretary shall file a plat of survey depicting  
10 the Saddleback Property (that includes a depiction of the  
11 Dedication Property, the Development Property, the  
12 Mountain Property, and the Preservation Property)  
13 with—

14 (1) the office of the Recorder of Maricopa  
15 County, Arizona; and

16 (2) the Titles and Records Center of the Bu-  
17 reau of Indian Affairs, located in Albuquerque, New  
18 Mexico.

19 **SEC. 6. LIMITATIONS ON USE AND DEVELOPMENT.**

20 Upon the satisfaction of all of the conditions of clos-  
21 ing set forth in the Settlement Agreement, the properties  
22 transferred pursuant to paragraphs (1) and (2) of section  
23 5(a) shall be subject to the following limitations and condi-  
24 tions on use and development:

25 (1) PRESERVATION PROPERTY.—



1 (A) IN GENERAL.—Except as provided in  
 2 subparagraph (B), the Preservation Property  
 3 shall be forever preserved in its natural state  
 4 for use only as a public park or recreation area  
 5 that shall—

6 (i) be utilized and maintained for the  
 7 purposes set forth in section 4(C) of the  
 8 Settlement Agreement; and

9 (ii) be subject to the restrictions set  
 10 forth in section 4(C) of the Settlement  
 11 Agreement.

12 (B) SHEA BOULEVARD.—At the sole dis-  
 13 cretion of the City, a portion of the Preserva-  
 14 tion Property may be used to widen,  
 15 reconfigure, repair, or reengineer Shea Boule-  
 16 vard in accordance with section 4(D) of the Set-  
 17 tlement Agreement.

18 (2) DEDICATION PROPERTY.—The Dedication  
 19 Property shall be used to widen, reconfigure, repair,  
 20 or reengineer Shea Boulevard and 136th Street, in  
 21 accordance with sections 4(D) and 7 of the Settle-  
 22 ment Agreement.

23 (3) MOUNTAIN PROPERTY.—Except for the  
 24 areas in the Mountain Property referred to as Spe-  
 25 cial Cultural Land in section 5(C) of the Settlement

1 Agreement, the Mountain Property shall be forever  
2 preserved in its natural state for use only as a public  
3 park or recreation area that shall—

4 (A) be utilized and maintained for the pur-  
5 poses set forth in section 5(C) of the Settlement  
6 Agreement; and

7 (B) be subject to the restrictions set forth  
8 in section 5(C) of the Settlement Agreement.

9 (4) DEVELOPMENT PROPERTY.—The Develop-  
10 ment Property shall be used and developed for the  
11 economic benefit of the Community in accordance  
12 with the provisions of the Settlement Agreement and  
13 the Development Agreement.

14 **SEC. 7. AMENDMENTS TO THE SETTLEMENT AGREEMENT.**

15 No amendment made to the Settlement Agreement  
16 (including any deviation from an approved plan described  
17 in section 9(B) of the Settlement Agreement) shall become  
18 effective, unless the amendment—

19 (1) is made in accordance with the applicable  
20 requirements relating to the form and approval of  
21 the amendment under sections 9(B) and 34 of the  
22 Settlement Agreement; and

23 (2) is consistent with the provisions of this Act.

○

The CHAIRMAN. I want to first of all welcome Terry Virden, the acting director of the Office of Trust Responsibility for the BIA, to give us a very brief statement. Did you get that, Terry? [Laughter.]

Mr. VIRDEN. Yes, sir.

The CHAIRMAN. And welcome back before the committee, Terry.

**STATEMENT OF TERRANCE VIRDEN, ACTING DIRECTOR,  
OFFICE OF TRUST RESPONSIBILITY, BIA**

Mr. VIRDEN. Good morning, Mr. Chairman. My name is Terry Virden, acting director of Office of Trust Responsibility, BIA. It is my pleasure to come before you today to present the Department of the Interior's views on S. 1341, a bill to provide for the transfer of certain lands to the Salt River Pima-Maricopa Indian Community and the city of Scottsdale, AZ, and for other purposes.

The bill resolves conflicts and resulting lawsuits between the city and the community, and provides for land transfers from the Resolution Trust Corporation to both parties. The city of Scottsdale and the Salt River Pima-Maricopa Indian Community have spent many months in negotiations and have agreed on the use of the property.

While we strongly support the enactment of 1341, we recommend existing section 5(b) be amended by adding:

Notwithstanding any other provisions of law, the United States shall not incur any liability for conditions existing prior to the transfer on the parcels of land to be transferred to the United States in trust for Salt River Pima-Maricopa Indian Community.

Consistent with our support for cooperative agreements in land acquisition and reservation expansion cases, we support the enactment of 1341. We believe that settlement will achieve an equitable resolution of the ongoing litigation and provide a basis for future economic development on the Salt River Indian Reservation. It will require only a limited expenditure of Federal funds for the completion of the land transfers, and no additional Federal funds for management of the land to be acquired on behalf of the community.

Further, we commend the city and the community for the cooperative government to government efforts as to achieve this settlement.

This concludes my prepared statement. I would be happy to answer any questions.

[Prepared statement of Mr. Virden appears in appendix.]

The CHAIRMAN. Thank you, Terry. And I believe that your recommendation for an additional amendment, as you stated it, notwithstanding any other provision of law, et cetera, is agreeable. I'll ask the Mayor and President Makil for their views about it. I believe it's not only agreeable, but also it's appropriate. And I don't see how, very frankly, that it would impede anything. We'd like to thank you and your office for the cooperation and effort that you've devoted in helping us achieve this settlement, and we're very appreciative of your efforts.

Thank you very much, Terry.

Our next two witnesses are Herbert Drinkwater, mayor of the city of Scottsdale; and President Ivan Makil, who's the president of Salt River Pima-Maricopa Indian Community, Scottsdale, AZ. And welcome, both of you. Please come to the table.

If you have written testimony, it will be made part of the record. Please feel free to summarize in any fashion which you choose to. And whoever wishes to go first can do so.

**STATEMENT OF IVAN MAKIL, PRESIDENT, SALT RIVER PIMA-MARICOPA INDIAN COMMUNITY**

Mr. MAKIL. Thank you, Senator McCain.

The CHAIRMAN. Thank you for coming this morning, Ivan.

Mr. MAKIL. We appreciate this time that you've set aside for this hearing, and all the encouragement that you've given to all of us in the processing of this type of settlement.

We know that you continually promote negotiations over litigation and this is a situation where the litigation turned out to be a very good and continual effort on the part of both communities, the city of Scottsdale and the Salt River Community, in an effort to preserve an area of land that is important to both of us. It helped us, I think, both communities, to realize and understand that we did have common issues and concerns over particular pieces of land, and as how land gets used and how it gets developed for people.

And we do appreciate the efforts as well of Mayor Drinkwater, Dick Bowers, the city manager, and his staff, all of the folks in the RTC that did assist us, at some point in this process, and also the BIA.

We have no disagreement with the amendment. We feel that all of the issues that have been raised or were up for consideration in the litigation have been resolved. And we are happy to be here today to say that.

And I do have a written statement to submit for the record. But those will be just some brief comments unless you have some questions later.

Thank you.

[Prepared statement of Mr. Makil appears in appendix.]

The CHAIRMAN. Thank you, Ivan. And yours and Herb's written statements will be made part of the record. And thank you again for your very important contribution.

Herb.

**STATEMENT OF HERBERT R. DRINKWATER, MAYOR, CITY OF SCOTTSDALE, AZ**

Mr. DRINKWATER. Thank you, Senator McCain.

It is an honor to be here with you and with President Makil today. This has been a very rewarding experience for both the Salt River Community and the city of Scottsdale. We sometimes forget that we do have a lot in common and that we do have the same goals, and that we truly are very good friends that care about each other.

And this is an important bill, and if I could make a few quick comments.

The CHAIRMAN. Sure.

Mr. DRINKWATER. This bill will secure the important landmark for the Indian community and the city of Scottsdale. It's an area of cultural significance for the Salt River Pima-Maricopa Indian Community, and it's called Saddleback Mountain.

Mr. Chairman, on behalf of myself and my fellow citizens, I want to thank you and Senator Kyl for introducing S. 1341 and working with President Makil and myself to make this hearing possible. I would also like to thank Representative J.D. Hayworth for introducing its companion measure, H.R. 2490, in the House.

Now, I have given you a tremendous amount of written testimony. In the interest of time, I can just summarize this and tell you that this is an extremely important piece of legislation to both the Salt River Community and the city of Scottsdale. And time is of the essence.

There's a time limitation, I believe, of 180 days, Mr. President, that started I think 2 weeks ago, as I recall. And we of the city of Scottsdale, as I'm sure are President Makil and his community, are prepared to meet with you and be available any time you need us.

But we do believe this legislation is extremely important to make this agreement become a reality. Saddleback already is a natural landmark, and a place of cultural importance to the Salt River Community.

And as a result of our agreement and your legislation, Mr. Chairman, it will become an intercultural monument also. It will serve as a symbol of mutual respect among the people of the Salt River Community, Scottsdale and all of our neighboring communities. It will stand as a monument for the deep and abiding love of the land that our citizens share, and the love that we have for each other as fellow human beings.

And thank you, Mr. Chairman. I'd be happy to answer any questions.

[Prepared statement of Mayor Drinkwater appears in appendix.]

The CHAIRMAN. Thank you very much, Herb. And again, it's very difficult for me to describe in adequate terms, in a city where rhetoric is a very cheap commodity, how important both you and Ivan Makil have been to the valley and to the State of Arizona. And in this year of increased tension in government-Indian relationships, this is, I think, an example of what can be done when people join together in partnership and understanding and mutual respect.

I have a series of questions I'd like to ask both of you very briefly, primarily for the record.

The administration's testimony recommends the amendment that we referred to that states the United States shall not incur any liability for pre-existing conditions on the lands to be transferred in trust to the Salt River Indian Community. Do either of you have any objections to such amendment?

Mr. MAKIL. No, sir.

Mr. DRINKWATER. No, sir; we accept that.

The CHAIRMAN. Section 10(a) of the settlement agreement requires the community to irrevocably restrict development of the mountain, roadway and development properties as a condition to having those properties taken into trust. Does the community's execution of the development and use agreements fully satisfy this requirement? Ivan?

Mr. MAKIL. Yes; we believe it does. It's pretty complete. We have spent a lot of time on this, and we're very happy with the outcome of the agreement.

Mr. DRINKWATER. I would concur, Senator.

The CHAIRMAN. Assuming that escrow is closed on the properties, will either the city or the tribe be subject to any taxation on those properties by Maricopa County or any other entity?

Mr. MAKIL. No; not on the lands that would be turned over into trust.

Mr. DRINKWATER. That is correct.

The CHAIRMAN. Is it correct that the agreement prohibits any gaming activity on the property acquired by the community unless, until and to the extent the same activity is legalized within the city, notwithstanding the National Indian Gaming Regulatory Act or any other State or Federal law?

Mr. MAKIL. That is correct, Senator McCain. It is also consistent with IGRA, yes.

Mr. DRINKWATER. Yes, sir.

The CHAIRMAN. Section 16(a) of the settlement agreement allows a city and the community to cancel the agreement if either objects to the condition of title to the properties each is to purchase. In view of the exhaustive attention your lawyers have given to the legal status of these properties, how likely is the city or the community to cancel the agreement over concern about legal title?

Mr. MAKIL. It is extremely unlikely, sir.

Mr. DRINKWATER. Extremely unlikely.

The CHAIRMAN. Would it be a reason to fire your lawyers? [Laughter.]

Mr. DRINKWATER. Probably.

The CHAIRMAN. If S. 1341 is enacted within 180 days of October 16, 1995, the date escrow opened on the properties, is either the city or the community likely to exercise its option in Section 10(e) to cancel the agreement?

Mr. DRINKWATER. We would not do that, but we would look to our neighbors, the Indian community, for direction.

Mr. MAKIL. Yes; and hopefully we don't get to that point. But if we do, we would be looking for those alternatives or options to continue to exercise that agreement in some form.

The CHAIRMAN. Well, let me say, I see no reason why we shouldn't be able to get this done very quickly. It's not controversial. We can report it out of committee very quickly.

Senator Kyl has submitted a statement for the record that shall be included without objection.

[Prepared statement of Senator Kyl appears in appendix.]

The CHAIRMAN. I want to state at this time that a copy of the settlement, release and property conveyance agreement will be made part of the committee file on S. 1341.

Are there additional comments that either of you would like to make, especially with respect to how you achieve agreements in an amicable manner? Ivan?

Mr. MAKIL. I think just, Senator, that we, I feel really good about the fact that, while we have had our differences with the city, that there has been displayed enough mutual respect to consider the concerns, the issues. And as we have had this opportunity to sit and reflect over the process that we went through, what it took was sitting down and discussing.

And although lawyers were involved and we had to do the legal aspect of it, I think that there was a realization on both sides that it could be a waste of energy and taxpayers dollars on both sides to spend time litigating as opposed to working these kinds of things out. And I think just having respect for each other in terms of communities and having the time to understand that we do have very similar thoughts about land uses and about services to people. And that our overall issue is service to our people, and that service extends beyond generally the bounds of either of our jurisdictions.

And recognizing that and understanding that, hopefully we can continue to be a model for the rest of our citizens, and help them to understand that it is important to respect each other in terms of ideas, thoughts and future aspirations as communities and as people.

Mr. DRINKWATER. The president is right. We sat down and found out that our goals were essentially almost identical, that we both cared about the land, the mountains and about the people of both communities. And we found we had a tremendous amount of respect for each other. This has been a very rewarding experience. And it's kind of an historical experience, it really is, at least for Arizona.

And we feel extremely good about the final result. And we feel even closer to our neighbors, and hopefully this will be the beginning of a very long, fruitful relationship between the two communities.

The CHAIRMAN. Well, in all due respect to all other participants and appreciation to the Administration for their assistance in this effort, and I am very appreciative, Terry, for all your assistance, I don't think this settlement would be possible without the enormous effort of two individuals whom I've become friends with, and dear friends with, for many years.

And I appreciate both of you very much. And I know that our fellow citizens, not just in Scottsdale, in the community, but the millions of people in generations to come who will be able to enjoy the pristine beauty of this very lovely place, will owe a great debt to both of you.

If there is no more discussion, we will adjourn this hearing. And again, thank you very much.

[Whereupon, at 9:46 a.m., the committee was adjourned, subject to the call of the Chair.]





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## APPENDIX

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### ADDITIONAL MATERIAL SUBMITTED FOR THE RECORD

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#### PREPARED STATEMENT OF HON. JON KYL, U.S. SENATOR FROM ARIZONA

Mr. Chairman, I want to thank you for scheduling this hearing today to review the Saddleback Mountain-Arizona Settlement Act, which I am pleased to have co-sponsored with you. I also want to express my thanks to the Mayor of Scottsdale, Herb Drinkwater, and the President of the Salt River Pima-Maricopa Indian Community, Ivan Makil, for the testimony they will deliver later today.

Mr. Chairman, I believe this legislation offers an opportunity for all to see what is best about Arizona: how parties of diverse interests can work together to improve the quality of life for all of the people in our community.

It could all have ended very differently. As pointed out in an editorial that appeared in the *Scottsdale Progress* back in July—a copy of which I will submit for the record—it is remarkable that the agreement was reached between the parties, “given the history of this transaction, the competitive bidding for the place, lawsuits, Scottsdale condemning the land after Salt River was the top bidder for the property.” The city and the Indian community not only overcame their differences, but their hard work and determination produced an agreement that serves each of them—and the entire metropolitan area—very well.

Under the agreement, Scottsdale and the tribe will buy about 700 acres of land at a price equal to the highest bid tendered to the Resolution Trust Corporation for the property. Most of the land, about 460 acres, will be dedicated as a preserve, giving the Indian community the assurance it needs that culturally important lands will remain undisturbed, and the city the assurance it needs that unwanted development will not occur.

The balance of the property will be used for economic development and roadway improvements.

This legislation very specifically locks in the terms of the settlement agreement so that neither party can attempt to leverage changes out of the other at any point in the future. Let me say that again because it is a very important point: Sections 6 and 7 of the bill provide that the terms of the agreement, namely the development restrictions, may not be changed without congressional consent.

There is a reason we put that language in the bill—a reason why I insisted on it. The intent here is for Congress to ratify an agreement based on its terms as we know and understand them today. An early version of the legislation would have permitted the City and the Tribe, by mutual consent, to make future amendments to the settlement agreement without coming back to Congress.

I believe it is important to require congressional approval of any significant change in the limitations on use and development. After all, they represent the very basis for the agreement between the city and the tribe.

Moreover, Congress is a party to this settlement; it is being asked to confer trust status upon lands based on the terms of the settlement agreement as it exists today. If the terms change at some point in the future, then Congress' rationale for conferring trust status may be undermined. Without the limitations in sections 6 and 7

of the bill, Congress would have no recourse if the city and the tribe later amend the agreement.

Mr. Chairman, this bill is a win-win for all concerned. The tribe is ensured protection for important cultural resources. The city gets a preserve. The RTC gets top dollar for the land. The Congress is assured that the basis for placing lands in trust status is preserved.

I look forward to working with you, Mr. Chairman, with the Mayor and the President of the Indian community, to secure early passage of this bill.

Thank you.

*Scottsdale Progress, July 29, 1995*

## Saddleback deal epitome of cooperation

With the bang of the gavel and little other comment, Scottsdale leaders approved what should be considered a historic agreement designed to preserve Saddleback Mountain that slumping ridge that Shea Boulevard splits on the east road out of town.

Clearly, people in Scottsdale have registered their interest in keeping our vertical landmarks. They've said so in this spring's election on the McDowell Mountains, in surveys, in debate about large buildings, in who they elect to office. Preserving this landmark follows that dictum.

But that alone isn't what makes this deal special. The big deal is that Scottsdale and the Salt River Pima-Maricopa Indian Community worked together enough—finally, on something—to craft a compromise that would work well for both entities. It may be even more remarkable given the history of this transaction, the competitive bidding for the place, lawsuits, Scottsdale condemning the land after Salt River was the top bidder for the property.

Under this arrangement, Scottsdale and the Indian community will buy the land from the RTC and dedicate it as a preserve, guaranteeing that status through an act of Congress. It is to be walked through Washington by Senators John McCain and Jon Kyl.

The Indian community will know that sites it considers sacred on the mountain will be undisturbed, and Scottsdale will be confident that it won't have development—particularly the development it feared most, a casino—on the city's main east-west thoroughfare. At the same time, everyone gets a park and preserve.

Given the inability to work together, and sometimes downright acrimony, between the two political entities, this is a delightful development. Let's hope it is also a bell-weather event rather than an aberration, that both communities will challenge each other for tax dollars and other natural competitions among jurisdictions, they also both will realize the dual benefits of cooperation and mutual respect on most things.

Most of the same please.

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### PREPARED STATEMENT OF TERRANCE VIRDEN, ACTING DIRECTOR, OFFICE OF TRUST RESPONSIBILITIES, BIA, DEPARTMENT OF THE INTERIOR

Good Morning Mr. Chairman and members of the committee. My name is Terry Virden, acting director, Office of Trust Responsibilities, BIA. It is my pleasure to come before you today to present the Department of the Interior's views on S. 1341, a bill "To provide for the transfer of certain lands to the Salt River Pima-Maricopa Indian Community and the city of Scottsdale, Arizona, and for other purposes." S. 1341, if enacted, would resolve a dispute between the city of Scottsdale, Arizona, and the Salt River Pima-Maricopa Indian Community. The bill would approve and ratify a Settlement Release and Property Conveyance Agreement [which includes a Development Agreement and a Land Use Agreement] for the Salt River Pima Maricopa Indian Community, the city of Scottsdale, Arizona, and the Resolution Trust Corporation. It also ensures that the Settlement Agreement is carried out and fully enforceable by its terms, including judicial remedies and binding arbitration provisions.

The bill resolves conflicts and resulting lawsuits between the city and the community, and provides for land transfers from the Resolution Trust Corporation to both parties. The city of Scottsdale and the Salt River Pima-Maricopa Indian Community have spent many months in negotiations and have agreed on the use of the property.

The 701-acre parcel of land is within the city of Scottsdale and is contiguous to the north boundary of the Salt River Indian Reservation. The Resolution Trust Corporation acquired the Saddleback property in 1989, as receiver for the failed Sun

States Savings and Loan Association. In October 1993, the city filed a condemnation action in an attempt to block a transfer of the property to the Community through an advertised sale conducted by the Resolution Trust Corporation. The condemnation action was brought because the city had certain use restrictions which could be enforced against the Community if the property were acquired in trust status, and concern that the Community's acquisition of the property would limit the City's right to control traffic in the northeast part of the city.

In response to the city's condemnation suit and the Resolution Trust Corporation's failure to transfer the property to the tribe [as the high bidder], the tribe filed a civil rights action in Federal District Court. As previously indicated, the parties to the two suits have now negotiated settlement agreements with the understanding that special legislation is needed to authorize the negotiated land transfers and confirm the agreed-upon land use restrictions.

The BIA generally supports reservation expansions to include lands which are contiguous to existing reservation boundaries, when local officials have been consulted about potential jurisdictional conflicts and an attempt has been made to address their concerns. S. 1341 would approve and ratify a Settlement Agreement which is dated September 11, 1995, but was executed on various other dates on behalf of the Resolution Trust Corporation, the city, and the community.

The Settlement Agreement provides for the transfer of approximately 125 acres to the city of Scottsdale, Arizona. The Settlement Agreement also provides for the transfer of approximately 576 acres to the community in trust status, with 365 acres of "mountain property" to be preserved largely in its natural state for the general public. The community would have exclusive use of specifically identified "special cultural land" within the "mountain property," and it would be free to develop the 211-acre "development property" in accordance with specific use restrictions which have been set forth in a separate Development Agreement. Among other things, the Development Agreement would prohibit any future use which obstructs existing drainages or facilitates any gambling activities which would not be legal within the city of Scottsdale.

The Settlement Agreement would also provide for the transfer of certain water rights from the Resolution Trust Corporation, and the transfer of a roadway within the "development property" from the city. Both transfers are to be made to the "United States in trust for the community" by quitclaim deed. The city and the community are paying fair market value for their respective shares of the property.

While we strongly support the enactment of S. 1341, we recommend existing Section 5(b) be amended by adding:

Notwithstanding any other provision of law, the United States shall not incur any liability for conditions, existing prior to the transfer, on the parcels of land to be transferred to the United States in trust for the Salt River Pima-Maricopa Indian Community." Consistent with our support for cooperative agreements in land acquisition and reservation expansion cases, we support the enactment of S. 1341. We believe that the Settlement will achieve an equitable resolution of the ongoing litigation, provide a basis for future economic development on the Salt River Indian Reservation. It will require only a limited expenditure of Federal funds for the completion of the land transfers and no additional Federal funds for the management of the land to be acquired on behalf of the community. Further, we commend the city and the community for their cooperative efforts—as government to government—to achieve this settlement.

This concludes my prepared statement. I would be happy to answer any questions you may have.

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#### PREPARED STATEMENT OF HERBERT R. DRINKWATER, MAYOR, SCOTTSDALE, ARIZONA

Mr. Chairman and members of the committee, I am honored to be here today with my good friend, President Ivan Makil, as we begin the final step in a process that will secure the future of an important landmark for the city of Scottsdale and a place of cultural significance for the Salt River Pima-Maricopa Indian Community. That place is Saddleback Mountain.

Mr. Chairman, on behalf of my citizens, I want to thank you and Senator Jon Kyl for introducing S. 1341 and working with President Makil and me to make this hearing possible. I would also like to thank Representative J.D. Hayworth for introducing its companion measure, H.R. 2490, in the House.

This bill will cement an agreement that will transfer a beautiful mountain from city of Scottsdale jurisdiction to our neighbors, the Salt River Community. Under the agreement, the community will purchase Saddleback Mountain and adjacent acreage from the Resolution Trust Corporation, and the city will purchase additional

RTC acreage on the mountain's north side. Together, the city and the community will pay \$6.5 million for this property.

Letting a scenic mountain go isn't an easy thing for a City to do, and, to be honest, Scottsdale was not thrilled with the idea 2 years ago, when this process first started.

But over months of negotiation with the Salt River Community, we've found that our goals for the mountain are virtually identical—we want to preserve it, and so does the community. The more difficult issues were really legal and technical in nature. They were focused mainly on lands at the base of the mountain, where development is more practical.

Thanks to President Makil and the cooperation of the Salt River Community Council, we've been able to work out a compromise that protects the interests of the community and the city.

The negotiations produced an agreement that may be unique in the nation. I think President Makil and I have a right to be proud of it. It ensures that the mountain belongs not only to the Salt River Community, but to everyone—President Makil's citizens as well as mine. Except for culturally significant areas at the summit, the mountain will be accessible to the public; and the community and the city have agreed to work together to construct hiking trails and related amenities there. Otherwise, its slopes will be protected from development, so that all of our citizens may enjoy its unspoiled beauty for generations to come.

Saddleback already is a natural landmark and a place of cultural importance for the Salt River Community. As a result of our agreement and your legislation, Mr. Chairman, it will become an intercultural monument, too. It will serve as a symbol of mutual respect among the people of the Salt River Community, Scottsdale and all of our neighboring communities. It will stand as a monument to the deep and abiding love of the land that our citizens share.

Mr. Chairman, as I mentioned, it is our view that this bill will "cement" the three-way agreement among the RTC, the Salt River Community and the city of Scottsdale.

Scottsdale believes this legislative "cement" is the best way to avoid legal ambiguities that could cloud portions of the agreement in the future. These ambiguities are related to the sovereign status of the Salt River Community. Although some attorneys have told the city that the agreement will stand without the formal blessing of Congress, they have not been able to provide the unequivocal assurances that will result from this legislation.

Mr. Chairman, you and your colleagues on the Indian Affairs Committee are certainly aware that the sovereign status of Native American communities is a complex and evolving area of the law. I am confident that you understand why the city is doing all it can to bring certainty and finality to our agreement with the community. I am pleased that the Salt River Community understood our concerns and agreed, early on, to support this legislation. I am also grateful to you, Mr. Chairman, for meeting with President Makil and me last spring and agreeing to introduce this legislation, so that we could bring the agreement to closure.

Background To explain in more detail why we believe S. 1341 is necessary, let me briefly recount the recent history of Saddleback Mountain from the city's standpoint.

Saddleback lies just within the city's eastern boundaries, adjacent to Shea Boulevard, which links with a major state highway and serves as the foremost eastern gateway to our city. The southern boundary of the Saddleback property is the existing boundary between the city and the Salt River Community.

The 701-acre parcel encompassing the mountain was placed under the protection of the Coastal Barrier Improvements Act in late 1992 by the RTC. It was subsequently advertised for sale to governmental and other qualified entities who expressed serious interest in preserving the property under the terms of the act.

In 1993, the RTC began the process of accepting bids on the property from qualified entities. However, the process was postponed numerous times while the precise conditions of the bidding procedure were clarified.

In October 1993, the RTC completed the process for accepting bids, and the city and community were among the qualified entities who submitted proposals. At about the same time, the Scottsdale City Council, still concerned about some aspects of the RTC process, condemned the Saddleback property with the stated intention of preserving the entire parcel as a public park. Because of the city's action, the RTC suspended the bid process. Subsequently, the Salt River community filed suit contesting the actions of the RTC and the city. Shortly after the suits were filed, the parties entered into negotiations to attempt to resolve their differences.

In the course of negotiations, the community made clear its interest in the property because of the mountain's cultural and historic significance. The city of Scotts-

dale also clarified that it was never the city's intention to exclude Salt River Community members from access to the mountain. In addition, the city was more than willing, not only to preserve the mountain in its natural state, but to protect sites of historic or cultural significance to the Indian community.

But placing this acreage under the ownership of the community and the prospect of annexing the land into the Reservation presented practical and legal questions for Scottsdale. *For example:*

- Who would have police jurisdiction over the property—city police, or Salt River police?
- If portions of the land were developed, who would be responsible for providing water, sewer and refuse disposal services?
- Under whose zoning standards would it be developed—the Community's or the city's?
- Could the city or the Federal Government reasonably assure our residents that we had sufficient legal recourse to enforce the requirements of the Coastal Barriers Improvement Act, even though the community enjoys sovereign immunity?

Over the past 2 years, the city, community and RTC have worked through these and other issues, and we have resolved our concerns. We are seeking formal ratification of the agreement by Congress, so there is no question that the terms and conditions spelled out in the document clearly are legally binding on all parties.

The final agreement meets the objectives of the city, the community and the RTC. It includes the following provisions:

1. The community and the city will purchase the entire Saddleback site for a combined total of approximately \$6.5 million, which is the amount bid by the community in 1993 and the highest bid received on the property at that time.

2. The city will obtain approximately 125 acres on the north and west side of the mountain, most of it straddling Shea Boulevard. Total purchase price for the city is \$636,000. The city acreage includes dedicated right of way for Shea and for 136th Street, a major north-south street planned along the west edge of the property, and for an access road to an existing city water tank on the property. The city will maintain the land along Shea as open space, ensuring a pristine, natural gateway at Scottsdale's eastern boundary.

3. The community will purchase the remainder of the land, about 576 acres, for \$5.8 million. The community's land is divided into two distinct areas. Approximately 365 acres, including the mountain itself, will remain in its natural state. Development will be allowed on an adjoining 211-acre parcel to the southwest, subject to the limitations and restrictions of current community zoning standards. In addition, the agreement provides for a 50-foot open-space buffer between any development and the city boundary.

4. The city will de-annex the community property, and it will become part of the reservation.

5. Last, but by no means least, the community and the city will jointly manage the natural preserve area containing Saddleback Mountain, which will remain accessible to the public. The community will have the right to limit access to the summit, which is a culturally significant area, to community members only.

Mr. Chairman, I think I can sum up my testimony in a few words: This is a good deal. The Federal Government gets its sales price, the Community gets its mountain, and the city gets a road, mountain protection and access, and the certainty that our citizens need.

Scottsdale is grateful that this legislation has been introduced and expedited, so that we can cement this deal, secure the future of Saddleback Mountain, and establish a lasting monument to friendship and cooperation between our two communities.

Thank you, Mr. Chairman. I will be glad to answer any questions.

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PREPARED STATEMENT OF IVAN MAKIL, PRESIDENT, SALT RIVER PIMA-MARICOPA INDIAN COMMUNITY

Good morning Mr. Chairman. I am Ivan Makil, the president of the Salt River Pima-Maricopa Indian Community. The enactment of S. 1341 is essential to the Saddleback Mountain settlement and I express the gratitude and appreciation of our community for your interest and effort in making it possible. While the settlement will be directly enjoyed by the city of Scottsdale and our community, it will also advance the interest that all the citizens of central Arizona have in preserving the great landmark known as Saddleback Mountain for all time to come. We also thank our Congressman, J.D. Hayworth, for his help and support in sponsoring this bill in the House of Representatives.

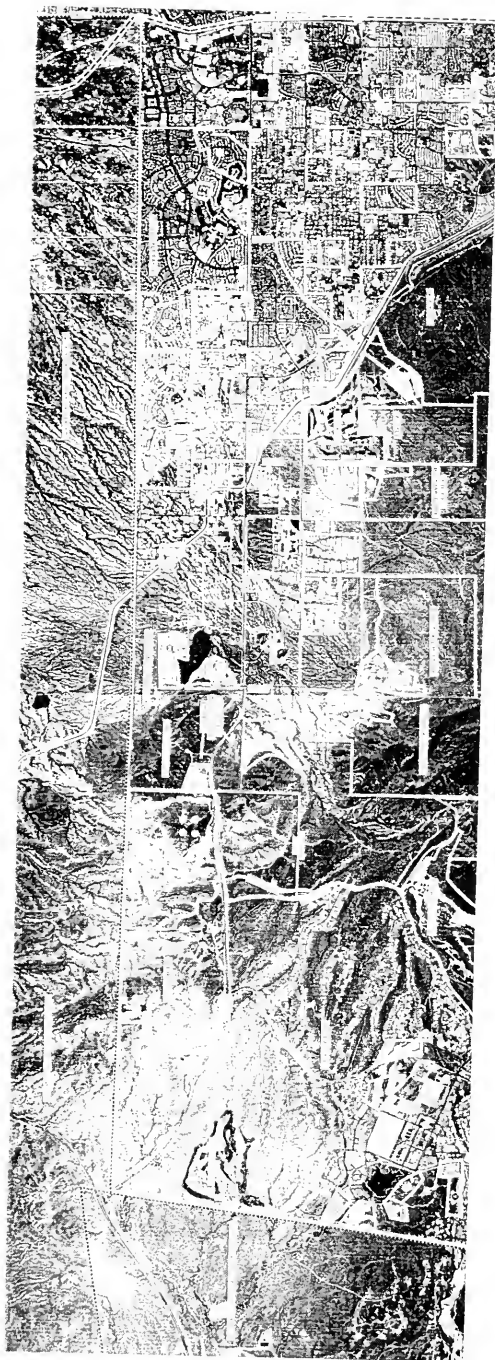
I am sure you understand the essential terms of the settlement that is confirmed by S. 1341: two lawsuits pending in the Federal District Court in Phoenix involving the Resolution Trust Corporation, the city and our community, will be closed out; the Resolution Trust Corporation will sell the Saddleback property to the city and the community for the highest and best price that had been offered to it for the property; the lands that are being sold to the community will be added to the reservation subject to enforceable assurances to the city as to its future use; and there is no cost whatever to us taxpayers. Most importantly, the great mountain, and the petroglyphs of our ancestors, will be preserved forever. You will find all these terms spelled out in the weighty legal documents. What I want to convey to you today is a sense of the promise that this settlement holds for our community and neighboring communities that may not be stated in express terms in the formal documentation.

I first want to speak of the promise that the settlement holds as a model for future relations between the community and Scottsdale and other neighbors. The initial impulse of the parties in dealing with their antagonistic differences was to file lawsuits in the courts. But in time we came to realize that there would be no winner in that forum. We came to see that resolution of our differences and the optimum achievement of our interests would be gained only by discussion and conciliation. At the outset of the talks our disagreements were sharp and we were far apart on issues of great concern to us. But the parties worked together in a constructive manner over the course of many months gradually narrowing the differences. I wish to thank Mayor Herb Drinkwater, City Manager Dick Bowers, and their staff, for their diligence and good spirit throughout this process. You can be sure that we all learned that the civil communication informed by mutual respect that marked the negotiations in this case will be the key to the resolution of other difficult issues that will be facing us in the future.

Second, I want to emphasize that Saddleback Mountain will become a new symbol of the sharing by our community with its neighbors of a great natural resource. Although the mountain will be within our reservation, it will face our neighbors to the north. The community will install and maintain hiking and equestrian trails with parking space and other facilities sited for convenient access from the north. The contribution by the community to its neighbors the use of this rich resource creates a bridge of goodwill between the community and its neighbors.

Attached to this statement, which we are submitting as a part of the record of this hearing, is an aerial photograph of the northern boundary of our reservation. It depicts the Saddleback Mountain property and illustrates its value as a great natural resource amid intensely developed urban surroundings. We will proudly maintain this resource for ourselves and for our neighbors for all future generations.

Again, thank you Mr. Chairman for your support of S. 1341 and for all the efforts you have made over the years for the betterment of the Salt River community. And thanks again to all the members of the committee.



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